

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TCJ I, LLC,

Plaintiff,

Case No:

-against-

**COMPLAINT**

RKM FLATLINE INC., RKM CONSTRUCTION CO, INC.  
and RICHARD J. MONTOYA,

Defendants.

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Plaintiff TCJ I, LLC by and through its attorneys, Ruskin Moscou Faltischek, P.C., as and  
for its Complaint states as follows:

**Nature of the Case**

1. This is an action to collect monies due and owing to TCJ I, LLC arising out of a  
defaulted business loan and personal guaranty.

**JURISDICTION AND VENUE**

2. Pursuant to 28 U.S.C. § 1332(a)(3), this Court has diversity jurisdiction over this  
case insofar as the matter in controversy exceeds the sum or value of \$75,000 and is between  
citizens of different states.

3. The parties to this action have all consented to the personal jurisdiction of this Court  
as provided in the various documents annexed to this Complain.

**Parties**

4. Plaintiff TCJ I, LLC ("TCJ") is a Delaware limited liability company with its  
principal address at 82 Nassau Street, #428, New York, NY 10038.

5. Defendant RKM Flatline Inc. is a corporation organized under and pursuant to the laws of the State of Colorado with its principal place of business at 1640 W. Girard Ave., Sheridan, Arapahoe County, Colorado 80110.

6. Defendant RKM Construction Co, Inc. is a corporation organized under and pursuant to the laws of the State of Colorado with its principal place of business at 1640 W. Girard Ave., Sheridan, Arapahoe County, Colorado 80110.

7. Defendant Richard J. Montoya ("Montoya") is an individual who resides at 8825 Doubleheader Rance Road, Morrison, Colorado 80465.

#### **Factual Background**

8. On or about July 21, 2015, RKM Flatline Inc. and RKM Construction Co, Inc. (collectively "Borrowers") and TCJ entered into a financing arrangement pursuant to which TCJ loaned Borrowers the amount of \$100,000 (the "Loan").

9. At the time the loan was made, the Borrowers and TCJ, entered into that certain: (a) Master Business Loan Agreement (the "MBLA"), a copy of which is annexed hereto as Exhibit A; and (b) Commercial Security Agreement (the "CSA"), a copy of which is annexed hereto as Exhibit B.

10. Contemporaneous with the execution and delivery of the MBLA and the CSA, Borrowers executed and delivered to TCJ that certain Commercial Promissory Note (the "Note", together with the MBLA and the CSA, the "Loan Documents"), a copy of which is annexed hereto as Exhibit C.

11. At the time the Borrowers executed and delivered the MBLA, the CSA and the Note, and as an inducement to TCJ to enter into the financing arrangement with the Borrowers, Montoya executed and delivered to TCJ his Continuing Guaranty (the "Guaranty") whereby he

absolutely and unconditionally guaranteed the obligations of the Borrowers owing to TCJ. A copy of the Guaranty is annexed hereto as Exhibit D.

12. In or about September, 2015, Borrowers defaulted on their obligations under the Loan Documents.

13. On or about September 15, 2015, TCJ sent a Notice of Default to Borrowers and Montoya, and pursuant to Section 2.7 of the Note, TCJ exercised its option to accelerate the entire outstanding balance together with all interest, default interest, late fees, costs, expenses and attorneys' fees.

14. On or about November 19, 2015, Borrowers, Montoya and TCJ entered into a Forbearance Agreement. A copy of the Forbearance Agreement is attached hereto as Exhibit E.

15. In or about March, 2016 the Borrowers and Guarantor defaulted under the Forbearance Agreement and TCJ declared the Borrowers and Guarantor to be in default thereunder and terminated the Forbearance Agreement.

16. As of May 1, 2016, the Borrowers and Montoya were obligated to TCJ for principal in the amount of \$117,560.64, interest in the amount of \$1,916.70, expenses and fees in the amount of \$6,500, aggregating the amount of ONE HUNDRED TWENTY-SIX THOUSAND SEVEN DOLLARS AND 34/100 (\$126,007.34), plus interest costs and fees (including, but not limited to, TCJ's reasonable attorneys' fees and costs) from May 1, 2016 (the "Obligations").

17. The Borrowers remain in default under Loan Documents and Forbearance Agreement and Montoya remains in default under his Guaranty

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(Breach of Loan Agreement)**

18. TCJ repeats, reiterates and restates each and every allegation set for the in paragraphs numbered 1 through 17 above as if fully set forth at length hereat.

19. The Loan Documents between TCJ and Borrowers constitute a valid and binding contract.

20. TCJ has performed its obligations under the Loan Documents.

21. Borrowers have materially breached the Loan Documents by failing to pay the Obligations.

22. Pursuant to the Loan Documents, TCJ is entitled to attorneys' fees, costs and expenses of collection.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(Breach of Guaranty)**

23. TCJ repeats, reiterates and restates each and every allegation set for the in paragraphs numbered 1 through 22 above as if fully set forth at length hereat.

24. The Continuing Guaranty between TCJ and Montoya is a valid and binding contract.

25. Pursuant to the Continuing Guaranty, Montoya unconditionally guaranteed to the full performance of Borrowers' duties and obligations under the Loan Agreement, and is liable for any and all amounts due TCJ, including but not limited to, principal, interest, default interest, late fees, attorneys' fees, and costs and expenses of collection.

26. Guarantor has materially breached the Guaranty by failing to pay the Obligations.

27. Pursuant to the Loan Documents, TCJ is entitled to attorneys' fees, costs and expenses of collection.


28. WHEREFORE, Plaintiff TCJ I, LLC, respectfully requests this Court enter judgment:

- (a) On its First Claim for Relief in its favor, jointly and severally, against Defendants RKM Flatline Inc. and RKM Construction Co, Inc. in the amount of \$126,007.34, plus interest costs and fees (including, but not limited to, TCJ's reasonable attorneys' fees and costs) from May 1, 2016;
- (b) On its Second Claim for Relief against Defendant Richard J. Montoya, in the amount of \$126,007.34, plus interest costs and fees (including, but not limited to, TCJ's reasonable attorneys' fees and costs) from May 1, 2016; and
- (c) Such other and different relief as this Court may deem to be just and proper.

Dated this 17<sup>th</sup> day of May, 2016.

Respectfully submitted,

RUSKIN MOSCOU FALTISCHEK, P.C.

By:   
Jeffrey A. Wurst  
A Member of the Firm

Defendants' Addresses:

RKM Flatline Inc.  
1640 W. Girard Ave.  
Sheridan, Colorado 80110

RKM Construction Co, Inc.  
1640 W. Girard Ave.  
Sheridan, Colorado 80110

Richard J. Montoya  
8825 Doubleheader Rance Road  
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